

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

24 HOUR FITNESS USA, INC.,)
a California corporation,)
)
Plaintiff,)
)
v.)
)
BALLY TOTAL FITNESS HOLDING)
CORP., a Delaware corporation,)
and MICHAEL SHEEHAN, an)
individual,)
)
Defendants.)

Civil Action No. 08 cv 3853

**Judge Joan Humphrey Lefkow
Magistrate Judge Morton Denlow**

**PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION
AND TO SET DATE FOR PRELIMINARY INJUNCTION HEARING**

Plaintiff 24 Hour Fitness USA, Inc., ("24 Hour Fitness") by and through its attorneys, Lovells LLP, moves this Honorable Court pursuant to the Illinois Trade Secrets Act, 765 ILCS § 1065/3 and Federal Rules of Civil Procedure 65(a) for a preliminary injunction against defendants Michael Sheehan ("Sheehan") and Bally Total Fitness Holding Corp. ("Bally"). In support hereof, the Plaintiff states as follows:

1. This is an action for the threatened or actual misappropriation of trade secrets arising under the Illinois Trade Secrets Act, 765 ILCS 1065/1 *et seq.* and for breach of fiduciary duty. 24 Hour Fitness Chief Operating Officer, Michael Sheehan, abruptly resigned and immediately joined a direct head-to-head competitor Bally, as its new Chief Executive Officer ("CEO").

2. Sheehan during his eight years at 24 Hour Fitness had access to and knowledge of 24 Hour Fitness' trade secrets across its business, from marketing, sales, operations, finance, and accounting. Because Sheehan's employment as CEO of Bally will necessarily require him to work in all of these areas, it is impossible for Sheehan to perform his duties and responsibilities for Bally without the inevitable disclosure of 24 Hour Fitness trade secrets. *See, Pepsico v. Redmond*, 54 F.3d 1262, 1268 (7th Cir. 1995). As a consequence, 24 Hour Fitness has and continues to suffer irreparable harm due to the defendants' wrongful conduct as more fully set forth in the Amended Complaint.

3. The plaintiff in summary and as more fully set forth in its Amended Complaint seeks an order from this court granting the following, but not limited, relief:

(A) both preliminary and permanent relief pursuant to 765 ILCS 1065/1, *et seq.* restraining and enjoining Defendant Sheehan and Bally and all those in privity, concert or participation with them from the threatened or actual misappropriation of the proprietary 24 Hour Fitness trade secrets and confidential information.

4 In support of this motion, Plaintiff incorporates by reference the Amended Complaint, and its supporting memorandum of law which will be filed separately with the court.

5. The Plaintiff has separately filed a motion for expedited discovery to obtain the limited discovery necessary to prepare for the preliminary injunction hearing and requests that the preliminary injunction hearing be scheduled as soon as possible after the completion of expedited discovery and for such other relief that is just and proper in the circumstances.

Dated: July 10, 2008

Respectfully Submitted,

24 Hour Fitness USA, Inc.

By: /s/ R. Mark Halligan
*An Attorney for Plaintiff 24 Hour Fitness USA,
Inc.*

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*Attorneys for Plaintiff 24 Hour Fitness
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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that she caused copies of the attached **Plaintiff's Notice of Motion and Motion For Preliminary Injunction and to Set Date For Preliminary Injunction Hearing** to be served upon:

III Alson D. Correll
Kilpatrick Stockton LLP
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1100 Peachtree Street
Atlanta GA, 30309

ACorrell@KilpatrickStockton.com

via e-mail and U.S. Mail on this 10th day of July, 2008.

/s/ Deanna R. Swits
Deanna R. Swits